

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
SAMUEL SHECHTER	:	DETERMINATION
	:	DTA NO. 808585
for Revision of a Determination or for Refund	:	
of Tax on Gains Derived from Certain Real	:	
Property Transfers under Article 31-B of the	:	
Tax Law.	:	

Petitioner, Samuel Shechter, 31 South Mountain Road, New City, New York 10956, filed a petition for revision of a determination or for refund of tax on gains derived from certain real property transfers under Article 31-B of the Tax Law.

A hearing was held before Timothy J. Alston, Administrative Law Judge, at the offices of the Division of Tax Appeals, Riverfront Professional Tower, 500 Federal Street, Troy, New York, on October 15, 1992 at 9:15 A.M. Petitioner filed a brief on December 28, 1992. The Division of Taxation filed a letter in response on January 21, 1993. Petitioner appeared by Kevin M. Flynn, Esq. The Division of Taxation appeared by William F. Collins, Esq. (Michael J. Glannon, Esq., of counsel).

ISSUES

I. Whether petitioner has shown that the transaction at issue, a transfer of the stock of a corporation having an interest in real property from petitioner to a partnership, was not a taxable sale of real property for gains tax purposes.

II. Whether petitioner has shown that the transaction at issue was exempt from gains tax pursuant to Tax Law § 1143.5 or, alternatively, Tax Law § 1443.7.

III. Whether petitioner has established reasonable cause and an absence of willful neglect to warrant abatement of penalty and penalty interest.

FINDINGS OF FACT

Petitioner, Samuel Shechter, has been a developer and builder of residential real estate

for more than 40 years. In 1966, petitioner and three other investors purchased four parcels of land comprising approximately 900 acres (the "Property") in the Village of Pomona (the "Village") located in Rockland County. The Property is situated atop Cheesecote Mountain, one of the highest points of elevation within a 30-mile radius of New York City. When the Property was purchased, it was essentially mountainous rock. The Property is bounded on the north and west by beautiful park land, and on the east by Haverstraw Bay. The southern exposure of the Property offers magnificent views of the Manhattan skyline.

Petitioner and the other investors paid about \$8,000.00 an acre for the Property. Twenty-five percent of the purchase price was paid in cash, and the balance by a purchase money mortgage to a bank. It was the intention of the investors to build approximately 3,000 homes on the Property. For various reasons, the three other investors withdrew from the project, and petitioner became the sole owner of the Property.

Petitioner's plans to develop the Property met with fierce opposition from the residents of the communities surrounding the Property. In fact, the residents formed the Village specifically to challenge the development of the Property in court. A seven-year legal battle with the Village ensued, but ultimately petitioner prevailed in court, and development of the Property proceeded. Thereafter, petitioner, at great expense, caused rock to be blasted from the Property, brought in roads, water, sewers, gas, and other improvements to the Property, and constructed homes on the Property.

As noted, the cost of developing the Property was substantial, particularly due to the mountainous and rocky nature of the land. Petitioner obtained financing for development and construction of the Property from four separate banks and one private lender. The financing totalled \$18,000,000.00. Petitioner was required to personally guarantee all financing. At the time of the hearing herein, approximately \$12,000,000.00 was still owed to the lenders that financed the project. Petitioner remains the sole guarantor of the full amount of the outstanding indebtedness on the Property.

In 1983, Redwoods at Pomona, Ltd. (the "Corporation") was formed. Petitioner owned

100 percent of the stock of the Corporation which, in turn, owned the Property. During the early to mid-1980's, petitioner was responsible for all aspects of the development of the Property. By 1986, homes had been built on the Property and were being sold to purchasers. The market for the Property was strong in 1986; lots were being sold for approximately \$125,000.00, and lots with homes were being sold in the range of \$300,000.00 to \$325,000.00.

In 1986, a real estate broker introduced petitioner to an investor named Bernie Gimbel ("Gimbel"). Petitioner and Gimbel entered into direct discussions with respect to Gimbel's desire to acquire a substantial portion of the Property. Those discussions resulted in an agreement which was memorialized in a contract of sale (the "Gimbel Contract") signed by petitioner, on behalf of the Corporation, and Gimbel, on behalf of Gimbel Holding Co., a real estate partnership, on September 17, 1986.

The Gimbel Contract provided for the sale of 169 lots (the "Lots") to Gimbel, which constituted approximately 80 percent of the total lots owned by the Corporation. The purchase price for the Lots was \$17,000,000.00, which was to be paid under the contract as follows: (i) \$200,000.00 upon the signing of the contract; (ii) \$8,400,000.00 by Gimbel securing a mortgage on the Property (the "New Senior Mortgage"), and making payment of these funds to the Corporation at the closing on the contract; and (iii) a purchase money mortgage of \$8,400,000.00.

In the negotiations between petitioner and Gimbel, it was stated by the parties, and at all times understood, accepted, and agreed that the sale of the Lots to Gimbel was conditioned upon Gimbel obtaining financing in an amount sufficient to make the cash payment (i.e., \$8,400,000.00) to the Corporation. Indeed, the Gimbel Contract expressly provided for the same by stating as follows:

"This transaction is specifically conditioned upon Purchaser obtaining a New Senior Mortgage in the principal amount of \$8,400,000.00. In the event Purchaser is unable or fails to obtain a written commitment for a New Senior Mortgage in the principal amount of \$8,400,000.00 by February 28, 1987, then either party upon notice to the other may cancel this contract and thereupon the downpayment hereunder shall forthwith be refunded to Purchaser and thereupon this contract shall be null and void and neither party shall have any claim against the other . . ." (emphasis supplied).

In 1986, at or around the time that petitioner had the contract in place for the sale of the Lots to Gimbel, Herman Simon ("Simon"), an attorney and friend of petitioner, advised petitioner to liquidate the Corporation. Moreover, Simon recommended that a plan of liquidation be adopted before the end of the 1986 tax year because a change in the Federal tax law that was to take effect on January 1, 1987 would make a liquidation that occurred in 1987 taxable to the Corporation, whereas if the plan of liquidation was adopted in 1986 it would be nontaxable under the law. Petitioner, who had no training or expertise in taxes, put his reliance and trust in Simon's professional judgment and friendship, and, with the assistance of Simon's former law firm, the Corporation adopted a plan of liquidation.

As part of the overall plan of liquidation, and pursuant to a contract dated December 24, 1986 (the "Partnership Contract"), petitioner transferred his shares in the Corporation to a partnership named Pomona at Redwoods (the "Partnership"). The partnership had been formed in December 1986; its partners were Edward Shechter ("Edward"), petitioner's brother, and RAP Real Estate Development Corp. ("RAP"), a corporation owned by Simon. The interests of Edward and RAP in the Partnership were 90 percent and 10 percent, respectively. As consideration for their respective interests, Edward and RAP contributed capital of \$1,000.00 and \$111.00 to the Partnership. Additionally, RAP loaned the Partnership \$74,889.00. The Partnership had no other assets.

The December 24, 1986 Partnership Contract between petitioner and Pomona at Redwoods for the transfer of petitioner's shares in the corporation provided for a total purchase price of \$17,195,000.00 in respect of such transfer to be paid as follows:

- (i) \$75,000.00 in cash to be paid at closing;
- (ii) \$1,900,000.00 to be paid by the partnership (purchaser) on behalf of petitioner (seller) in respect of petitioner's real property transfer gains tax liability arising from the subject transfer; and
- (iii) \$15,220,000.00 to be paid pursuant to the terms of a note to be given by the purchaser to the seller.

The closing of the sale of shares between petitioner and the Partnership occurred on December 24, 1986. Pursuant to the contract, petitioner received \$75,000.00 in cash at the closing. Petitioner also received a note from the Partnership in the principal amount of \$15,220,000.00 and, in addition, received a purchase money mortgage on the Property to secure the indebtedness evidenced by the note.

The note and mortgage given by the Partnership provided that neither the Partnership nor the individual partners were to become personally liable on the note or mortgage.

The Partnership Contract provided that any payments received by the Partnership from Gimbel (pursuant to the Gimbel Contract) would be paid over to petitioner. The Partnership Contract also noted that the Gimbel Contract contemplated the execution of mortgages in respect of the Gimbel transfer and provided that the Partnership would cause such mortgages to be issued with petitioner as the mortgagee.

Additionally, in connection with the recordation of the mortgage given to petitioner by the Partnership, the contract between petitioner and the Partnership provided as follows:

"In the event that the Gimbel Holding Co. transaction is not consummated and the Seller [petitioner] has so recorded said mortgage then, Purchaser [Partnership] shall reimburse the Seller for such recording charges. In the event that the transactions with Gimbel Holding Co. are not consummated and the Seller has not so recorded such mortgage then, upon the Seller causing such mortgage to be recorded, Purchaser shall pay or cause to be paid such recording fees and taxes or shall reimburse the Seller for such recording fees and taxes. In the event that the transaction with Gimbel Holding Co. . . . is consummated then, the note and mortgage shall be reduced in order to reflect payments received by the Seller herein in connection with such transaction and if the mortgage has been recorded, then at the time of closing of either the Gimbel Holding Co. transaction . . . , the Seller shall deliver in recordable form appropriate releases of lien from the Seller's mortgages in connection with the lots being sold."

The Partnership Contract contained no provisions stating that such contract was contingent upon or subject to the consummation of the Gimbel Contract.

Among the provisions of the Partnership Contract were the following:

"No extension, termination or other modification of or to any provisions of this Agreement shall be valid unless made in writing and signed by all of the parties hereto.

* * *

"This Agreement contains the entire agreement of the parties relating to subject matter encompassed thereby and there are no agreements, understandings or representations made by any of the parties hereto other than those expressly contained herein."

Immediately following the closing of the Partnership Contract, the corporation was liquidated pursuant to the plan of liquidation and its assets (i.e., the Property) were transferred to the Partnership. The corporation's final tax return listed the Partnership as the corporation's sole shareholder.

On December 30, 1986, petitioner filed a real property transfer gains tax transferor questionnaire (Form TP-580) dated December 29, 1986, in respect of his sale of shares to the Partnership. The questionnaire indicated an anticipated gains tax due of \$1,907,139.00. Petitioner also filed, as transferor, a real property transfer gains tax supplemental return (Form TP-583), dated December 29, 1986, which indicated gains tax deferred of \$1,832,139.00 and tax due with said return of \$75,000.00. Petitioner remitted \$75,000.00 with the return.

The Partnership filed a real property transfer gains tax transferee questionnaire (Form TP-581), dated December 24, 1986, in respect of the sale of stock from petitioner to the Partnership.

Petitioner subsequently applied to the Division of Taxation ("Division") for a deferred payment plan for the gains tax arising from his sale of stock to the Partnership.

Gimbel was unable to meet the requirement set forth in the Gimbel Contract that he secure financing for the \$8,400,000.00 "New Senior Mortgage" by February 28, 1987. Gimbel therefore exercised his right to cancel the contract.

In response to a Division letter dated April 27, 1987 requesting certain information in connection with petitioner's request for a deferred payment plan, petitioner's former representative stated, by letter dated May 15, 1987, in part, as follows:

"Please be advised that subsequent to the Closing, there were certain post-closing adjustments (including the non consummation of the sale of 169 lots to Gimbel) which are reflected on a revised computation of the purchase price which is enclosed herewith. However, at this time, the note and mortgage have not been recast in order the [sic] reflect these changes."

Petitioner's former representative communicated with the Division several times in

connection with petitioner's request for a deferred payment plan. In addition to the May 15, 1987 letter, petitioner's representative sent letters to the Division dated August 5, August 6, August 7, August 12, and December 18, 1987, and February 23 and April 15, 1988. None of the letters made any statement to the effect that the December 24, 1986 contract between petitioner and the Partnership was in any way subject to or contingent upon the consummation of the Gimbel Contract.

The August 6, 1987 letter from petitioner's former representative to the Division advised that the note given to petitioner by the Partnership in respect of the December 24, 1986 sale had been recast such that the principal amount of the note was increased to \$15,399,686.00.

The December 18, 1987 letter provided copies of the note and mortgage as recast and also noted that the term of such mortgage and note had been extended to 10 years. The letter also stated the following:

"Please be further advised that since the transaction of December 24, 1986, no payments have been made to Sam Shechter under the note and mortgage, and as a result thereof, Mr. Shechter is not in a position to make payment of the installment due on December 24, 1987. Request is hereby made for an extension in the due date of such installment obligation to March 24, 1988."

By letter dated May 12, 1988, the Division reduced petitioner's gain from the December 24, 1986 transaction by \$802,578.00. This reduction resulted from certain information supplied by petitioner's former representative by letter dated April 5, 1988. The information resulted in an increase in petitioner's basis in the subject property at the time of the December 24, 1986 transaction.

Petitioner was granted permission to pay the real property transfer gains tax at issue on an installment basis. Petitioner failed, however, to make his first installment payment which was due December 24, 1987. The Division therefore issued a Statement of Proposed Audit Adjustment dated March 14, 1988 demanding payment of such installment. Petitioner failed to make this payment and the Division declared the entire gains tax balance due by the issuance of a Statement of Audit Adjustment dated August 16, 1988.

On November 14, 1988, the Division issued to petitioner a Notice of Determination of

Tax Due under Article 31-B which assessed \$1,871,056.50 in gains tax due, plus penalty and interest.

In the months following Gimbel's cancellation of the September 17, 1986 contract with the Corporation, petitioner, and not Edward Shechter or Herbert Simon, attempted to locate an alternate buyer for the property in question. Petitioner was unsuccessful in his efforts. To sustain the project after Gimbel withdrew, it became necessary for petitioner to borrow additional funds for which he became the sole personal guarantor.

Petitioner never received any payments from the Partnership with respect to the transfer of his shares other than the \$75,000.00 cash payment. In fact, petitioner expected no payments from the Partnership once Gimbel failed to acquire the necessary financing to purchase the Property.

After the sale with Gimbel was cancelled, petitioner's day-to-day involvement with the project was unchanged. He continued to go to work each day, he continued to develop the Property, and he sold lots and homes to buyers. Neither of the partners had any day-to-day role in the project.

Petitioner acquired the partnership interest in the subject Property at some point following Edward Shechter's death in February 1988.

SUMMARY OF PETITIONER'S POSITION

Petitioner contended that his sale of shares of Redwoods at Pomona, Ltd. to the Partnership pursuant to the Partnership Contract was not a sale of real property subject to tax under Article 31-B and that an analysis of the substance of this transaction, rather than its form, supports this contention. Petitioner contended that it was understood and agreed among himself, Edward Shechter and Herbert Simon that the sale of shares to the Partnership was subject to the successful completion of the Gimbel Contract. Further, petitioner contended that the sale of shares of the Corporation was made solely for tax purposes pursuant to a plan of corporate liquidation which had to be completed by December 31, 1986 in order to gain certain corporate income tax advantages.

Petitioner argued that these contentions were supported by other facts contained in the record. Petitioner noted that the Partnership was required to make payments to petitioner of amounts received under the Gimbel Contract. Petitioner further noted that the note delivered by the Partnership to petitioner was non-recourse and that the Partnership was capitalized with \$1,111.00. Additionally, petitioner contended that the \$75,000.00 cash transferred in the transaction was inadequate to support the approximately \$17,400,000.00 selling price. Petitioner also noted that even after the sale of shares to the Partnership he remained personally liable on about \$18,000,000.00 in development and construction loans that he had obtained for the project. Petitioner contended that these facts represented evidence that the transaction at issue was not a sale of an interest in real property under the gains tax statute and that the subject transfer was exempt under Tax Law § 1443.5 as a mere change of identity or form of ownership with no change in beneficial ownership.

Alternatively, petitioner contended that the subject transfer was exempt from gains tax pursuant to Tax Law § 1443.7 as an option to purchase real property without the use or occupancy of such property. Petitioner contended that the Partnership had no right to use or occupy the Property unless and until it exercised its option, which the Partnership would have exercised only if there had been a closing on the Gimbel Contract.

Petitioner also sought abatement of penalties imposed herein. Petitioner contended that reasonable cause and absence of willful neglect are present for the abatement of such penalties based upon petitioner's reliance upon the advice of counsel at all stages of the subject transaction.

CONCLUSIONS OF LAW

A. Tax Law § 1441 imposes a tax at the rate of 10 percent on gains derived from the transfer of real property within New York State. Tax Law § 1440.7 defines "transfer of real property" as:

"the transfer or transfers of any interest in real property by any method, including but not limited to . . . acquisition of a controlling interest in any entity with an interest in real property."

In the case of a corporation, a "controlling interest" is defined as either 50 percent or more of the total voting power of all classes of stock or 50 percent or more of the capital, profits or beneficial interest in the voting stock of the corporation (Tax Law § 1440.2).

B. Upon review of the record it is clear that petitioner's transfer of shares in the Corporation pursuant to the Partnership Contract constituted a transfer of real property subject to tax under Tax Law § 1441. The Partnership Contract, pursuant to which the shares of stock were transferred, sets forth the terms of such transfer clearly and unambiguously. The contract is not conditioned upon the completion of the Gimbel Contract. Moreover, such contract expressly provides that the terms of the contract constitute the entire agreement between the parties (see, Finding of Fact "17"). Accordingly, petitioner's contention that the parties to the contract "understood" that such contract was subject to the Gimbel Contract is rejected. Additionally, petitioner's attempt to read conditional language into the contract in the provision requiring payments received pursuant to the Gimbel Contract to be paid to petitioner is also rejected. The provision in question does not even come close to stating that the contract is conditioned upon the consummation of the Gimbel Contract. It is further noted that the contract does make reference to the possibility of the failure of the Gimbel Contract (see, Finding of Fact "15"). Significantly, such reference clearly contemplates the completion of the Partnership Contract notwithstanding the failure of the Gimbel Contract. Furthermore, as previously noted, and in marked contrast to the Gimbel Contract (see, Finding of Fact "8"), the contract contains no language whereby it is specifically conditioned upon the consummation of the Gimbel Contract.

C. It should be further noted that, even if the written contract did not clearly and unambiguously provide for the transfer of shares unconditioned on the Gimbel Contract, petitioner's conduct following the transfer and following the cancellation of the Gimbel Contract, gives no indication that he "understood" the transfer of shares to be so conditioned. Specifically, petitioner filed gains tax documents as transferor of the subject Property with the Division. Additionally, petitioner's former representative was in frequent contact with the

Division by letter following the sale of shares. Two of the letters made reference to the failed Gimbel sale. None of the letters gave any indication that the sale of shares was conditioned on the Gimbel Contract. Furthermore, the note given to petitioner by the Partnership was recast in light of the non-consummation of the Gimbel Contract. Indeed, these facts suggest that, consistent with the terms of the Partnership Contract, petitioner understood the sale of shares to the Partnership to have been unconditional. It is noted that the first indication that the subject sale was not subject to gains tax followed petitioner's failure to meet his installment payment of tax in December 1987 and the statement in a December 18, 1987 letter by petitioner's representative that petitioner was in no position to make such a payment. This fact suggests that petitioner's current "understanding" of the Partnership Contract resulted more from later economic difficulties than a contemporaneous understanding of the transaction.

D. As noted previously, petitioner contended that the subject transfer was exempt from gains tax under Tax Law § 1443.5 as a mere change of form or identity of ownership without a change in beneficial interest. Petitioner asserted that, notwithstanding its form, the subject transfer did not constitute a substantive transfer of an interest in real property. Petitioner asserted that a proper analysis of the transaction would look through its form to its substance. Petitioner noted that various gains tax provisions "look through" the form of transactions to their substance to impose gains tax.

Petitioner's contention is rejected. Clearly, the subject transfer did not constitute a mere change of identity or form of ownership. Petitioner had no interest, beneficial or otherwise, in the Partnership. His transfer of shares to the Partnership was not, therefore, exempt from gains tax pursuant to Tax Law § 1443.5 (see also, 20 NYCRR 590.50).

As noted, petitioner asserted that, in substance, he retained his beneficial interest in the subject Property following the transfer. Regarding this contention, it is noted that:

"In determining the applicability of an exclusion, it is the form of the transaction, not the substance which controls (see, Matter of Sunny Vending Co. v. State Tax Comm., 101 AD2d 666, 667, 475 NYS2d 896; Matter of Ormsby Haulers v. Tully, 72 AD2d 845, 421 NYS2d 701; Matter of Sverdlow v. Bates, 283 App Div 487, 491, 129 NYS2d 88). There is nothing irrational about the Tax Commission's determination, which effectively binds the taxpayer to the form of business chosen

by it (Matter of 107 Delaware Assoc. v. New York State Tax Comm., 99 AD2d 29, 33-34, 472 NYS2d 467 [Casey, J., dissenting], supra). " (Matter of Greco Bros. Amusement Co. v. Chu, 113 AD2d 622, 625, 497 NYS2d 206.)

Accordingly, inasmuch as the instant determination merely "binds" petitioner to the gains tax consequences of a transaction in which he chose to participate, it is not necessary to inquire further into the substance of petitioner's relationship with the Property following the transfer.

It is further noted, however, that petitioner's assertion that he retained his beneficial interest in the subject Property is unsupported by the record. Petitioner did retain an interest in the Property as a mortgagor (vis-a-vis the Partnership) and as a debtor (vis-a-vis third parties). The record does not indicate that petitioner had any rights other than those normally associated with a creditor or debtor. Further, while petitioner continued as developer of the Property, the record does not establish that, as developer, petitioner was not under the legal control of the Partnership.

E. Petitioner noted that he received no payments under the note given to him by the Partnership under the contract. With respect to this point, it is noted that Tax Law § 1440.5(a) defines "original purchase price" as "the consideration paid or required to be paid" (emphasis supplied). Tax Law § 1440.1(a) defines "consideration" as:

"the price paid or required to be paid . . . including the amount of any purchase money mortgage, lien or indebtedness" (emphasis supplied).

Tax Law § 1442 provides that the tax imposed by Article 31-B "shall be paid . . . on the date of the transfer."

The foregoing statutes make clear that gains tax liability is determined as of the date of transfer by reference to the face amount of any mortgage or note given. As noted by the Tax Appeals Tribunal in Matter of Cheltoncort (December 5, 1991, confirmed 185 AD2d 49, 592 NYS2d 121):

"In calculating the amount of tax due upon a taxable transaction, the value of the consideration has to be determined at the time of the transfer in order to finally fix the tax owed. Subsequent events do not alter the value that the consideration had at the time of the transfer" (emphasis added).

Accordingly, the subsequent failure of the Partnership to make payments to petitioner on

the note have no bearing on petitioner's gains tax liability.

F. Petitioner's alternative argument that the transaction at issue was exempt pursuant to Tax Law § 1443.7 is also rejected. This argument was premised upon petitioner's contention that the December 24, 1986 contract was subject to the closing of the Gimbel Contract. As discussed, it is concluded that petitioner's contract with the Partnership was not subject to the Gimbel Contract. Additionally, the December 24, 1986 contract is clearly a contract for the sale of shares. There is no language in said contract to even suggest the sale of an option.

G. Tax Law § 1446.2(a) provides for the imposition of penalty and interest penalty where a transferor fails to file a return or to timely pay gains tax. Such penalty may be abated, however, where the taxpayer's failure results from reasonable cause and not from willful neglect.

Petitioner contended that since he relied on the advice of counsel throughout all states of the transaction, his failure must be deemed reasonable.

It is well settled law that reliance on the advice of counsel, in itself, is insufficient to warrant the setting aside of assessed penalties and interest because the reasonableness of the particular reliance must be evaluated (Matter of 1230 Park Assoc. v. Commr. of Taxation & Fin. of State of New York, 170 AD2d 842, 566 NYS2d 957; Matter of Auerbach v. State Tax Commn., 142 AD2d 390, 536 NYS2d 557; Matter of LT & B Realty Corp. v. New York State Tax Commn., 141 AD2d 185, 535 NYS2d 121; Matter of Benacquista, Polsinelli & Serafini Mgt. Corp., Tax Appeals Tribunal, February 22, 1991). The Tax Appeals Tribunal has consistently held that the reasonableness of a taxpayer's position must be evaluated by a comparison to the Division's articulated policy (Matter of Benacquista, Polsinelli & Serafini Mgt. Corp., *supra*; *see also*, Matter of Birchwood Assoc., Tax Appeals Tribunal, July 27, 1989; Matter of Copley Plaza Co., Tax Appeals Tribunal, June 8, 1989; Matter of Normandy Assoc., Tax Appeals Tribunal, March 23, 1989).

Petitioner has not pointed to any articulated Division policy to support a finding of exemption from gains tax under circumstances similar to those present herein. Accordingly,

penalty and penalty interest is sustained.

H. The petition of Samuel Shechter is hereby denied and the Notice of Determination of Tax Due under Article 31-B dated November 14, 1988 is sustained.

DATED: Troy, New York
June 24, 1993

/s/ Timothy J. Alston
ADMINISTRATIVE LAW JUDGE